



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Paper No. 9

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**MAILED**

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Office of the Director  
Group 3600

In re Application of	:	
Frank Venegas, Jr.	:	
Application No. 09/815,628	:	DECISION ON PETITION TO
Filed: March 23, 2001	:	REVIEW RESTRICTION
Attorney Docket No. 11605/14	:	REQUIREMENT UNDER
For: Hand Rail System	:	37 CFR 1.144

This a decision on the petition received September 6, 2002, to have claims 5-21 examined, which will be treated as a Petition to the Commissioner under 37 CFR 1.144 to review the restriction requirement.

The Petition is **DENIED**.

A careful review has been made of the various points raised by petitioner with respect to the election requirement. No clear error has been found in the election requirement to warrant withdrawal of the action.

On June 10, 2002, an election of species requirement, Paper No. 5, was mailed to petitioner. Petitioner responded to the election of species requirement in Paper No. 6, filed July 2, 2002. In his response, petitioner elected Species 2 and traversed the requirement stating "Applicant believes species 2, 3, and 4 should be combined, as they all have in common an infill panel, regardless of their construction". The examiner reviewed petitioner's argument, determined it was not persuasive, and made the election requirement final in the Office action, Paper No.7, mailed August 1, 2002.

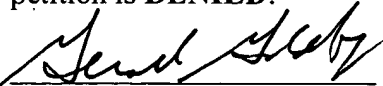
In the election of species requirement, Paper No. 5, the examiner identified five species as corresponding to the embodiments of figures 1-4, 5-8, 9-13, 14-22, and 23, respectively. In response to petitioner's traversal of the requirement, the examiner identified the following mutually exclusive features of species 2, 3, and 4: the slip-on fitting and U-shaped channels of species 2; the clips of species 3; and the slip-in fitting of species 4.

The examiner followed a standard method of identifying species, by identifying figures, and followed a standard method of demonstrating the restrictability, by describing mutually exclusive features. See MPEP § 806.04(f). Petitioner, on the other hand, has failed to point out the errors

in the election requirement. Petitioner has merely alleged that species 2, 3, and 4 are not patentably distinct, without providing any evidence in support of his position.

Petitioner, in the instant petition, has further alleged "There is sufficient similarity between these embodiments to allow the Examiner to perform a search without undue burden". Petitioner is reminded that there is no requirement for a burdensome search when election of species is required. See MPEP § 808.01(a). Accordingly, Petitioner's argument is not persuasive.

For the forgoing reasons, the examiner's election of species requirement was clearly proper. The petition is **DENIED**.



Gerald Goldberg

Director

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